

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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GINGER SEITLES,

Plaintiff,

v.

UNUM PROVIDENT, UNUM LIFE  
INSURANCE COMPANY OF AMERICA,

Defendants.

NO. CIV. S-04-2725 FCD/DAD

MEMORANDUM AND ORDER

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This matter is before the court on the parties' cross-motions for judgment on the administrative record, pursuant to Federal Rule of Civil Procedure 52,<sup>1</sup> arising out of defendants UnumProvident Corporation and Unum Life Insurance Company of America's (collectively, "defendants" or "UNUM") denial of plaintiff Ginger Seitles' ("plaintiff") claim for long-term

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<sup>1</sup> Rule 52(a)(1) provides in pertinent part: "In an action tried on the facts without a jury . . . , the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court."

1 disability ("LTD") benefits.<sup>2</sup>

2 For the reasons set forth below, the court finds that the  
3 proper standard of review of this matter is abuse of discretion,  
4 as opposed to de novo, and thereunder, the court finds that UNUM  
5 did not act arbitrarily or capriciously in denying plaintiff's  
6 LTD benefits claim. As such, the court DENIES plaintiff's motion  
7 for judgment in her favor and HEREBY GRANTS judgment in favor of  
8 UNUM.

9 **BACKGROUND**

10 **A. The Policy**

11 The California Independent System Operator ("CAL ISO"),  
12 plaintiff's former employer, purchased the UNUM Group Long Term  
13 Disability Policy Number 519640 (the "Plan") to provide long-term  
14 disability coverage for its active, eligible employees. Relevant  
15 to this action, the Plan provides, in pertinent part, as follows:

16 **HOW DOES UNUM DEFINE DISABILITY?**

17 You are disabled when UNUM determines that:  
18 - you are **limited** from performing the **material**  
19 **and substantial duties** of your regular occupation  
20 due to **sickness** or **injury**; and  
21 - you have a 20% or more loss in your **indexed monthly**  
22 **earnings** due to the same sickness or injury.

23 After 24 months of payments, you are disabled when  
24 UNUM determines that due to the same sickness or  
25 injury, you are unable to perform the duties of any  
26 gainful occupation for which you are reasonably fitted  
27 by education, training or experience. (Administrative  
28 Record ["AR"], filed July 29, 2009 [Docket #30],  
UACL00021.)

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<sup>2</sup> Because oral argument will not be of material assistance, the court orders these matters submitted on the briefs. E.D. Cal. L.R. 78-230(h). Neither party filed a reply on the motions.

**CERTIFICATE SECTION**

. . .  
The policy is delivered in and is governed by the laws of the governing jurisdiction and to the extent applicable by the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments. When making a benefit determination under the policy, UNUM has discretionary authority to determine your eligibility for benefits and to interpret the terms and provisions of the policy. (AR: UACL00015.)

**WHEN DOES YOUR COVERAGE END?**

Your coverage under the policy or plan ends on the earliest of:

. . .  
-the date you are no longer in an eligible group . . .  
-the last day you are in active employment except as provided under the covered layoff or leave of absence provision. (AR: UACL00018.)

**ELIGIBLE GROUP(S):**

All employees in active employment. (AR: UACL00009.)

**MINIMUM HOURS REQUIREMENT:**

Employees must be working at least 30 hours per week. (AR: UACL00009.)

**ACTIVE EMPLOYMENT** means that you are working for your Employer for earnings that are paid regularly and that you are performing the material and substantial duties of your regular occupation. You must be working at least the minimum number of hours as described under Eligible Group(s) in each plan. (AR: UACL00043.)

(Emphasis in original.)

**B. Plaintiff's Employment History**

Plaintiff worked for CAL ISO as a Senior Market Integration Engineer. CAL ISO is a not-for-profit public-benefit corporation charged with operating the majority of California's high-voltage wholesale power grid. Plaintiff was hired by CAL ISO on July 7,

1 1997, and her last date of employment was November 16, 2001.<sup>3</sup>  
2 Although plaintiff now asserts that she left her employment  
3 because of a disability (AR: UACL00348-00349), records from  
4 plaintiff's personnel file indicate that she was terminated  
5 because of job performance issues. Her personnel file includes  
6 an October 11, 2001 memorandum entitled "Performance Improvement  
7 Plan for Ginger Seitles." (AR: UACL00846-00849). Said  
8 memorandum indicates that plaintiff's managers, supervisors and  
9 co-workers had complained about certain inappropriate behavior by  
10 plaintiff, including that she "barged" into issues in which she  
11 had no involvement, "jumped to conclusions" unnecessarily and  
12 made "racially insensitive slurs." (Id.) CAL ISO scheduled a  
13 further review of plaintiff's performance for November 15, 2001.  
14 However, on November 11, 2001, plaintiff entered into a  
15 settlement agreement with CAL ISO wherein she agreed to the  
16 termination of her employment in exchange for a payment of  
17 \$27,742.68, representing four months pay; plaintiff also released  
18 CAL ISO from any claims arising from the termination of her  
19 employment. (AR: UACL00881-883.) Notably, there are no records  
20 in plaintiff's personnel file which indicate that, during the  
21 entirety of her employment with CAL ISO, she had any issues  
22 relating to her physical ability to perform her job due to  
23 multiple sclerosis ("MS") (which plaintiff now maintains rendered  
24 her disabled from performing her job for the company). (AR:  
25 UACL00846-849.)

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26  
27 <sup>3</sup> Neither party has provided a citation to the  
28 administrative record for these facts; however, the parties also  
do not dispute plaintiff's dates of employment with CAL ISO so  
the court has accepted these facts as true.

1 Following the termination of her employment with CAL ISO,  
2 plaintiff began looking for new employment. (AR: UACL00954-00959,  
3 UACL001249, UACL001253, UACL001256, UACL001257.)<sup>4</sup> Ultimately,  
4 she did not accept other employment. She explained in a later  
5 personal injury action that she declined certain positions due to  
6 injuries she sustained in an automobile accident in July 2002.  
7 (See Section E below.)

8 **C. UNUM's Review of Plaintiff's Initial Benefits Claim**

9 On May 7, 2003, sixteen months after her employment with CAL  
10 ISO had ended, plaintiff filed a Disability Claim Form with UNUM  
11 in which she asserted she was unable to work as of November 16,  
12 2001 due to MS that had been diagnosed in April 1998. She  
13 claimed her MS symptoms had worsened over time. (AR: UACL00348.)  
14 In support of her claim, plaintiff submitted an Attending  
15 Physician's Statement from Philip B. Baldi, D.O., who concluded  
16 that plaintiff had been disabled since November 16, 2001 due to  
17 neck pain, MS, cervical disease and shoulder pain. Dr. Baldi  
18 listed plaintiff's restrictions as "anything that will exacerbate  
19 back [and] shoulder [pain], like bending, lifting, reaching,  
20 [and] computer work." (AR: UACL00352.)

21 In reviewing plaintiff's claim, UNUM considered various  
22 medical records predating plaintiff's claimed date of disability  
23 of November 16, 2001 as well as records post-November 16, 2001.  
24 The pre-November 16 records included the following: (1) a June

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25 <sup>4</sup> Said citations reference plaintiff's deposition  
26 testimony, discussed below, and various letters UNUM received  
27 from prospective employers, including community colleges and  
28 other companies, whom plaintiff interviewed with following her  
termination from CAL ISO (said interviews took place in April  
2002 and June 2002).

1 19, 2001 report from Dr. Baldi indicating that plaintiff  
2 complained of a rash, gastroenteritis and nausea (AR: UACL00442);  
3 and (2) a November 13, 2001 report from Dr. James C. Stoodly, a  
4 neurologist, indicating that plaintiff complained of a "stabbing  
5 discomfort in her feet and numbness in her extremities" but  
6 "denied any motor impairment;" Dr. Stoodly performed an  
7 examination of plaintiff and concluded that there were "no  
8 significant abnormalities on motor, sensory, reflex testing,  
9 cranial nerve exam or gait and station assessment;" Dr. Stoodly  
10 described that plaintiff's symptoms were "entirely subjective at  
11 this point in time" but that her symptoms could potentially be  
12 "cervical in level," and he recommended she have a cervical MRI  
13 scan. (AR: UACL00545.) Plaintiff did not report to either Drs.  
14 Baldi or Stoodly that she was unable to work, physically or  
15 otherwise. (Id.)

16 Post-plaintiff's alleged date of disability of November 16,  
17 2001, UNUN considered a November 28, 2001 office note of Dr.  
18 Baldi which described that plaintiff was very stressed due to  
19 losing her job, and that she felt "anxious about her unemployment  
20 and a little bit depressed." (AR: UACL00443.) Again, however,  
21 plaintiff did not complain that she was unable to work,  
22 physically or otherwise.

23 Thereafter, on December 17, 2001, plaintiff had an MRI of  
24 her cervical spine, as ordered by Dr. Stoodly, that showed a  
25 "moderate sized right paracentral disc protrusion impinging on  
26 the right side of the spinal column." (AR: UACL00543.) On  
27 December 27, 2001, Dr. Stoodly examined plaintiff and concluded  
28 that the "cervical MRI scan . . . shows a C5-6 disc herniation

1 that is fairly substantial and eccentric to the right indenting  
2 the spinal cord, but producing no signal change there." He  
3 requested an EMG study regarding plaintiff's complaints of right  
4 arm numbness and recommended that plaintiff see him in four  
5 months. (AR: UACL00548.)

6 On February 26, 2002, plaintiff had a nerve conduction study  
7 of her right upper extremity, which was normal. (AR: UACL00550.)  
8 Also, on February 26, after seeing plaintiff, Dr. Stooddy noted as  
9 follows:

10 [Plaintiff] reports a sizeable improvement in radicular  
11 symptoms. She actually has very little in the way of  
12 pain. The cervical disc herniation producing radiculopathy  
13 seems to have resolved. She has positive CSF serology  
14 consistent with MS. Visual evoked potentials were normal.  
15 Previous MRI scanning showed normal appearing white  
16 matter. *I cannot state that she unequivocally has multiple  
17 sclerosis, however, I think it is probable and it is  
18 reasonable to continue the Copaxane.* We will see her again  
19 in three to four months for follow up. The size of the  
20 disc herniation was substantial, but at this juncture with  
21 her asymptomatic state, I cannot recommend surgical  
22 intervention. It is not possible to state whether the disc  
23 herniation has [contributed] to any degree to her symptoms.  
24 (AR: UACL00549.) (Emphasis added.)

25 In addition, plaintiff saw Dr. Baldi on February 26, 2002; he  
26 diagnosed her with fungal nails, and plaintiff requested a  
27 referral to a plastic surgeon for breast reduction surgery. (AR:  
28 UACL00444.)

29 Plaintiff was involved in an automobile accident on July 27,  
30 2002. Thereafter, on July 29, 2002, she saw Dr. Baldi,  
31 complaining of headache, upper back pain, upper thoracic pain,  
32 low back pain and left hand pain. Dr. Baldi diagnosed plaintiff  
33 with (1) muscular ligamentous strain of the cervical and thoracic  
34 muscles; (2) left shoulder pain with normal exam; and (3) left  
35 hand pain. (AR: UACL00447.)

1 Plaintiff did not follow up with Dr. Stoody in three to four  
2 months as he had recommended during the February 26, 2002 office  
3 visit. Instead, plaintiff returned to Dr. Stoody on July 30,  
4 2002, over five months later, complaining of injuries that she  
5 sustained in the motor vehicle accident on July 27, 2002. Dr.  
6 Stoody noted that neurologically plaintiff appeared to be stable.  
7 He declined to see her regarding personal injury issues. Dr.  
8 Stoody concluded that plaintiff was "ambulatory and appear[ed] to  
9 be quite stable from a physical standpoint." (AR: UACL00551.)  
10

11 On August 13, 2002, plaintiff was seen by Dr. Baldi. She  
12 complained of neck and left shoulder pain. Dr. Baldi again  
13 diagnosed plaintiff with muscular ligamentous strain of the  
14 cervical and upper thoracic spine and strain of the left  
15 shoulder. (AR: UACL00448.)

16 **D. UNUM's Initial Decision on Plaintiff's Benefits Claim**

17 After a review of the above medical records, on August  
18 5, 2003, UNUM denied plaintiff's benefits claim, finding that  
19 there was no clear diagnosis of MS and no findings to support a  
20 disability based on cervical back pain. (AR: UACL00568-573.)  
21 UNUM advised plaintiff of her right to administratively appeal  
22 the decision. However, plaintiff never appealed the decision and  
23 instead, filed the instant suit on November 2, 2004. Plaintiff  
24 originally filed the case in state court, but defendants removed  
25 the action to this court on December 28, 2004.

26 **E. UNUM Reassesses Plaintiff's Benefits Claim**

27 During the course of this litigation, UNUM entered  
28 settlement agreements with the United States Department of Labor



1 and state insurance regulators. (Makabenta Decl., filed July 31,  
2 2009, ¶ 2.) As part of those settlements, UNUM agreed to  
3 reconsider claims that it had previously denied using new  
4 guidelines and procedures designed to ensure a fair and balanced  
5 decision. (Id.)

6 In February of 2005, UNUM offered plaintiff the right to  
7 participate in the reassessment process. On March 1, 2005,  
8 plaintiff agreed to have UNUM reassess her claim, pursuant to the  
9 settlement agreements, and she agreed to a stay of this action  
10 pending UNUM's review. (Id. at ¶ 4.)

11 In reassessing plaintiff's benefits claim, UNUM considered,  
12 in addition to the medical records discussed above, the  
13 following:

14 **(1) Plaintiff's Social Security Administration ("SSA")**  
15 **File**

16 In January 2003, plaintiff applied for social security  
17 disability benefits, asserting she was disabled since November  
18 16, 2001. After having plaintiff examined by a mental health  
19 practitioner on February 25, 2003, the SSA found plaintiff  
20 disabled primarily due to anxiety related disorders. Pertinent  
21 notes from that examination provided as follows:

22 She is very cooperative. Described her mood as  
23 depressed. Mood was flat to very depressed. She was  
24 almost expressionless and moved very slowly and absent  
25 mindedly. There was some indications of delusional and  
26 magical thinking with irrational fear of going out  
27 of her home and fear of being alone. She is not suicidal  
28 at this time but it cannot be ruled out. She seemed  
paranoid at times but reports no hallucinations. Speech  
was slowed and tangential. Difficult time staying on  
track. Memory was poor, difficulty with short-term memory  
and verbal recall.

Axis 1: panic disorder with agoraphobia and major  
depressive disorder, chronically depressed.

Axis 3: MS.

1        Axis 4: poor human relations, isolation, homebound.  
2        Axis 5: 40. Serious symptoms and impairment in social  
      and occupational functioning. (AR: UACL00645.)

3        The SSA did not find plaintiff impaired from performing full-time  
4        work from a physical standpoint. Dr. Mark Tambellini examined  
5        plaintiff on behalf of the SSA and found that plaintiff could  
6        stand, walk or sit about six hours in an eight hour day. (AR:  
7        UACL00718.) Ultimately, the SSA approved plaintiff's claim for  
8        social security disability benefits as of November 16, 2001.

9                    **(2) A Further Review of Plaintiff's Medical Records**

10        On February 19, 2007, UNUM requested a file review of  
11        plaintiff's medical records by a neurologist and a psychiatrist.  
12        UNUM asked of these physicians: "Do the records on file support  
13        any R&L's or impairment (psychiatric or MS related) prior to or  
14        as of 11/16/01 which was the date [plaintiff] was terminated from  
15        her employer?" (AR: UACL00886.)

16        Dr. Sabrina W. Hammond, Board Certified in Internal  
17        Medicine, responded to UNUM as follows (AR: UACL00898-902):  
18        (1) while there was some support for plaintiff's diagnosis of MS,  
19        Dr. Hammond found "there [was] [in]sufficient medical evidence  
20        showing a loss of function or loss of ability to perform  
21        occupational duties due to [MS]. The medical records provided  
22        prior to and at the date of disability do not support any  
23        impairment from the diagnosis of multiple sclerosis[;]"

24        (2) Dr. Hammond found that plaintiff's "symptoms were  
25        self-reported, mild in nature and physical and neurological  
26        testing were essentially normal. Physical exam found no  
27        corresponding abnormalities in motor, sensory, reflex testing,  
28        cranial nerve exam or gait and station assessment. [Plaintiff's]

1 complaints were basically sensory in nature. There was minimal  
2 pain reported with her MS symptomology. There was a complaint of  
3 memory loss and cognitive dysfunction however this was not  
4 evaluated at or near the date of disability;" and (3) Dr. Hammond  
5 concluded that plaintiff's medical records did not support any  
6 impairment from the diagnosis of MS; there were no supported  
7 restrictions and limitations for this diagnosis and her medical  
8 records did not provide evidence that plaintiff was physically  
9 unable to perform the requirements of her job for CAL ISO. (AR:  
10 UACL00898.)

11 Additionally, neuropsychologist D. Malcolm Spica, Ph.D.,  
12 reviewed plaintiff's file and concluded as follows:

13 After reviewing the entire file, I do not find to a  
14 reasonable degree of professional certainty that  
15 [plaintiff's] psychiatric condition rose to the level  
16 of impairment around her 11/01 date of disability. A  
subsequent evaluation two years later does document  
significant psychiatric symptomology (GAF = 40).

17 However, it is not clear to me that the later diagnosis  
18 is relevant to the disability claim due to the lapse of  
19 time between her date of disability and the evaluation,  
20 and multiple intervening events including introduction  
21 of medications, unemployment, and a motor vehicle  
examination results, the file does not reflect that the  
claimant's level of behavioral health care was  
consistent with a debilitating psychiatric disorder.  
(AR: UACL00893-895.)

22 **(3) Plaintiff's Deposition Testimony in Her Personal**  
23 **Injury Action**

24 Plaintiff sustained personal injuries as a result of an  
25 automobile accident on July 27, 2002, and subsequently filed a  
26 civil action against the other driver. UNUM obtained certain  
27 documents from that action, including plaintiff's deposition  
28 testimony provided on May 19, 2004. Therein, plaintiff testified

1 that following the termination of her employment with CAL ISO,  
2 she actively sought other employment, including jobs with other  
3 ISOs as well as teaching positions. (AR: UACL 00954-959.) She  
4 claimed she was the "number one" candidate for a job with the New  
5 York ISO but ultimately had to reject the position due to the  
6 automobile accident. (Id.) She also testified that she was  
7 unable to pursue a dean of instruction position at a local  
8 community college due to the injuries she sustained as result of  
9 the automobile accident. (Id.) Plaintiff testified that her  
10 short term memory loss, depression and general pain, which she  
11 complained of to her neurologist, was more from the motor vehicle  
12 accident than her MS. (AR: UACL00941-959.)

13 **F. UNUM Issues Final Denial of Plaintiff's Benefits Claim**

14 On April 9, 2007, after completing its reassessment of  
15 plaintiff's claim, UNUM denied plaintiff's claim for LTD  
16 benefits. In pertinent part, UNUM concluded as follows:

17 The records in [plaintiff's personal] file document she  
18 [was] terminated . . . and settled with California ISO  
19 on November 11, 2001 . . . [Plaintiff's May 19, 2004]  
20 deposition transcript established that [plaintiff]  
21 believed she was capable of working full time up to the  
22 date of the [motor vehicle accident]. She indicated  
23 that she settled with the CA ISO, resigned and applied  
24 for numerous jobs, interviewed for some, and claimed  
25 she would have taken a job at the New York ISO had she  
26 not been in an MVA. [Plaintiff] also indicated she was  
27 going to substitute teach and in fact applied for a full  
28 time, tenure track position as a Business Assistant  
Professor. [Plaintiff] was also asked why she did not  
work after her employment ended with the CA ISO and  
in-between the MVA. She answered because she was  
seeking employment and looking for a job that would fit  
her lifestyle. After her resignation with the CA ISO  
she was looking for jobs in her area of expertise.  
[Plaintiff] further testified that she was awarded  
permanent disability by the SSA subsequent to the MVA.  
In addition, she testified that in speaking with her  
neurologist about her short term memory loss, depression,  
and the pain was not so much from the MS but more from

1 the MVA accident.

2 Based on our review of all the documentation in the file[,]  
3 [t]he records support that as November 16, 2001  
4 [plaintiff] was not disabled when she terminated her  
5 employment with CA ISO. The medical records reviewed by  
6 our medical department did not support a continuous  
7 disabling condition. [Plaintiff] may have had a later  
8 period of disability as a result of her injuries sustained  
9 in the MVA of July 2002; however, this period of disability  
10 was not covered under the UNUM policy. Because [plaintiff]  
11 was not disabled on her last day worked, coverage ended on  
12 November 16, 2001. Therefore, we are upholding  
13 the decision to deny liability on her claim. (AR:  
14 UACL01304-1307.)

9 **STANDARD**

10 Before reaching the merits of the parties' motions, the  
11 court must determine whether to apply de novo or abuse of  
12 discretion review to UNUM's denial of plaintiff's LTD benefits.  
13 The Plan at issue here is governed by the Employee Retirement  
14 Income Security Act of 1974 ("ERISA"). In Firestone Tire &  
15 Rubber Co. v. Bruch, the United States Supreme Court held that a  
16 challenge to the denial of benefits under an ERISA plan is  
17 reviewed de novo "unless the benefit plan gives the administrator  
18 or fiduciary discretionary authority to determine eligibility for  
19 benefits or to construe the terms of the plan." 489 U.S. 101,  
20 115 (1989). When a plan document gives an administrator such  
21 discretionary authority, a court must apply the "abuse of  
22 discretion" or "arbitrary and capricious" standard of review to  
23 its decision to deny benefits. Id. at 111; see also Abatie v.  
24 Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th Cir. 2006).

25 In this case, the Plan unambiguously grants UNUM discretion  
26 when reviewing claims. The Plan expressly states that "[w]hen  
27 making a benefit determination under the policy, UNUM has  
28 discretionary authority to determine your eligibility for

1 benefits and to interpret the terms and provisions of the  
2 policy." (AR: UACL00015.) Only where there are procedural  
3 violations "so flagrant as to alter the substantive relationship  
4 between the employer and employee, thereby causing the  
5 beneficiary substantive harm," does the court apply de novo  
6 review despite the discretionary grant of authority. Gatti v.  
7 Reliance Standard Life Ins. Co., 415 F.3d 978, 985 (9th Cir.  
8 2005). As an example of what constitutes "wholesale and flagrant  
9 violations of the procedural requirements of ERISA," the Ninth  
10 Circuit in Abatie cited the facts in Blau v. Del Monte Corp., 748  
11 F.2d 1348 (9th Cir. 1984), noting that in Blau, "the  
12 administrator had kept the policy details secret from the  
13 employees, offered them no claims procedure, and did not provide  
14 them in writing the relevant plan information." Abatie, 458 F.3d  
15 at 971.

16 No such failure "to comply with virtually every applicable  
17 mandate of ERISA" is at issue here. Id. Nonetheless, plaintiff  
18 claims that de novo review should apply because of the structural  
19 conflict of interest that exists in this case. UNUM does not  
20 dispute that such a conflict exists here since it both  
21 administers and funds the subject Plan.<sup>5</sup> That fact, however,  
22 does not require application of de novo review. Montour v.  
23 Hartford Life & Accident Insur. Co., - F.3d -, No. 08-55803, 2009  
24 WL 2914516, \*5 (9th Cir. Sept. 14, 2009) (emphasizing that the  
25 existence of a structural conflict of interest does not alter the  
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27 <sup>5</sup> A structural conflict of interest exists where the plan  
28 administrator is also the insurer since benefits are paid out of  
the administrator's own pocket, and thus, by denying benefits,  
the administrator retains money for itself.

1 standard of review itself, rather it alters the *application* of  
2 the standard). In reviewing the administrator's decision, the  
3 conflict of interest must be weighed as a factor in determining  
4 whether there is an abuse of discretion. Id. at \*4; accord  
5 Metropolitan Life Insur. Co. v. Glenn, 128 S. Ct. 2343, 2350  
6 (2008). The extent to which a conflict of interest appears to  
7 have motivated an administrator's decision "is one among  
8 potentially many relevant factors that must be considered,"  
9 including the "quality and quantity of the medical evidence,  
10 whether the plan administrator subjected the claimant to an in-  
11 person medical evaluation or relied instead on a paper review of  
12 the claimant's existing medical records, whether the  
13 administrator provided its independent experts 'with all of the  
14 relevant evidence[,] and whether the administrator considered a  
15 contrary SSA disability determination, if any." Id. at \*5  
16 (citing MetLife, 128 S. Ct. at 2352). Ultimately, "[t]he weight  
17 the court assigns to the conflict factor depends on the facts and  
18 circumstances of each particular case." Id. Therefore, this  
19 court recognizes that the inherent conflict of interest found in  
20 this case is a factor to consider when analyzing UNUM's denial of  
21 Plan benefits; however, the conflict of interest does not alter  
22 the standard of review, which, in this case, the court concludes  
23 is abuse of discretion.

#### 24 ANALYSIS

25 Applying the abuse of discretion standard of review, the  
26 sole issue before the court is whether UNUM abused its  
27 discretion, or in other words, acted arbitrarily and  
28 capriciously, in denying plaintiff's LTD benefits claim. An

1 administrator's decision is an abuse of discretion only when it  
2 is without reason, unsupported by substantial evidence or  
3 erroneous as a matter of law. Id. at \*4 (describing abuse of  
4 discretion standard when a conflict of interest is not at issue);  
5 Taft v. Equitable Life Ins. Co., 9 F.3d 1469, 1472 (9th Cir.  
6 1994). So long as the administrator's decision has a rational  
7 basis, the court is not free to substitute its own judgment for  
8 that of the administrator in determining the eligibility for plan  
9 benefits even if the court disagrees with that decision. Id.  
10 Under the abuse of discretion standard, the only issue is  
11 whether, on the evidence considered, the administrator's  
12 determination was "reasonable." Horan v. Kaiser Steel Retirement  
13 Plan, 947 F.2d 1412, 1417 (9th Cir. 1991); see also Clark v.  
14 Wash. Teamsters Welfare Trust, 8 F.3d 1429, 1432 (9th Cir. 1993)  
15 ("Our inquiry is not into whose interpretation of plan documents  
16 is most persuasive, but whether the plan administrator's  
17 interpretation is unreasonable.")

18 Moreover, the scope of review under the arbitrary and  
19 capricious standard is very limited. The focus of an abuse of  
20 discretion inquiry is the administrator's analysis of the  
21 administrative record--it is not an inquiry into the underlying  
22 facts. Alford v. DCH Found Group Long-Term Disability Plan, 311  
23 F.3d 955, 957 (9th Cir. 2002). Thus, the court will not consider  
24 information outside the administrative record, as it would be  
25 improper to find a claims administrator abused its discretion  
26 based on evidence not before it at the time the decision was  
27 made. Taft, 9 F.3d at 1472.



1 As set forth above, because UNUM has a structural conflict  
2 of interest in this case, the court must consider that fact in  
3 its application of the above standards.

4 Here, a review of the administrative record reveals that  
5 UNUM did not abuse its discretion in denying plaintiff's LTD  
6 benefits claim. The evidence shows that UNUM made a reasonable  
7 conclusion based on the materials and records at its disposal,  
8 and there is no evidence its conflict of interest impacted the  
9 decision on plaintiff's claim.

10 Plaintiff's assertion that she was disabled on her last day  
11 of employment with CAL ISO, on November 16, 2001, simply is not  
12 supported by the record. Plaintiff's medical records predating  
13 November 16 do not establish that she was precluded from  
14 performing her job duties due to MS. And, even accepting  
15 plaintiff's claimed diagnosis of MS as true, that diagnosis,  
16 standing alone, is not sufficient to find that plaintiff was  
17 disabled as of November 16, 2001. The Ninth Circuit has  
18 recognized repeatedly that merely because "a person has a true  
19 medical diagnosis . . . does not by itself establish disability."  
20 Jordan v. Northrop Grumman Corp. Welfare Benefit Plan (Jordan  
21 II), 370 F.3d 869, 880 (9th Cir. 2004) (upholding the denial of  
22 the plaintiff's benefits claim not because the plaintiff failed  
23 to demonstrate the existence of a medical condition  
24 [fibromyalgia] but because the plaintiff was unable to prove that  
25 her physical disability kept her from performing her job).

26 In this case, in June and November 2001, plaintiff did not  
27 complain to Drs. Baldi or Stooddy that she was unable to work,  
28 physically or otherwise, and neither physician concluded as such.

1 Indeed, on November 13, 2001, just days before plaintiff's  
2 claimed date of disability, Dr. Stooddy specifically noted that  
3 plaintiff "denied any motor impairment," and his examination of  
4 plaintiff revealed "no significant abnormalities" with "motor,  
5 sensory, reflex testing, cranial nerve exam or gait and station  
6 assessment." (AR: UACL00545.)

7 Moreover, plaintiff's personnel file indicates that she  
8 separated her employment with CAL ISO due to performance issues;  
9 she agreed to the termination of her employment in exchange for  
10 severance monies, and she released CAL ISO from any claims  
11 relating to her termination. Nothing in plaintiff's personnel  
12 records indicates that, during her employment, she had any  
13 medical issues which precluded her from performing her job duties  
14 for CAL ISO. (AR: UACL00846-849.)

15 Following her termination, plaintiff actively sought other  
16 employment. This fact is conclusively established by plaintiff's  
17 own deposition testimony, wherein she describes her efforts to  
18 obtain similar jobs at other state ISOs and teaching positions at  
19 various community colleges. Indeed, she testified that it was  
20 the automobile accident in July 2002 that precluded her from  
21 obtaining subsequent employment; she did not testify that her MS,  
22 or any other medical condition, precluded her from working prior  
23 to the accident.

24 Plaintiff's medical records post-November 16, 2001 and  
25 predating the July 2002 automobile accident likewise do not  
26 support a finding that plaintiff was disabled as of November 16,  
27 2001. In her office visit on November 28, 2001 with Dr. Baldi,  
28 plaintiff reported only that she was stressed and a "bit

1 depressed" due to losing her job at CAL ISO; she did not report  
2 that she was unable to work due to any physical or mental  
3 condition. Additionally, through June 2002, none of plaintiff's  
4 medical records indicate a completely, disabling condition.  
5 Moreover, even after plaintiff's automobile accident, Dr. Stoodly  
6 reported, in July 2002, that plaintiff was "ambulatory and  
7 appear[ed] to be quite stable from a physical standpoint." (AR:  
8 UACL00551.) While Dr. Baldi did diagnosis plaintiff with  
9 muscular ligamentous strain of the cervical and upper thoracic  
10 spine and strain of the left shoulder during the same period, his  
11 findings were made within days of plaintiff's July 27, 2002  
12 accident--an accident which occurred over seven months after  
13 plaintiff left her employment with CAL ISO.

14 In addition, the court finds particularly significant to  
15 this case that plaintiff did not apply for LTD benefits from UNUM  
16 until May 7, 2003, *sixteen* months after her termination from CAL  
17 ISO. In neither moving for or opposing judgment in the case has  
18 plaintiff explained the reason for this delay nor does the  
19 administrative record reveal a reason. To the extent the record  
20 sheds any light on the issue, it suggests that plaintiff did not  
21 apply for benefits because she was *not* disabled from working. As  
22 set forth above, her own sworn testimony establishes that post-  
23 her termination from CAL ISO she continued to actively seek other  
24 employment and did not ultimately secure other employment due to  
25 the automobile accident, not any disability related to her MS  
26 (diagnosed during her employment with CAL ISO). Plaintiff  
27 testified that she had not worked between her departure from CAL  
28 ISO and the car accident because she "was seeking employment and

1 looking for a job that would fit [her] lifestyle." (AR:  
2 UACL00955-956.) Plaintiff did not testify that she was not  
3 working due to a disability. Plaintiff claimed that the  
4 automobile accident caused her to become disabled. (AR:  
5 UACL00951, UACL00956.) She sought lost earnings of \$163,000 and  
6 lost future earnings of \$2,649,600. (AR: UACL00997.) Plaintiff  
7 could not have obtained such earnings if she was, in fact,  
8 disabled prior to the motor vehicle accident.

9       Based on these facts, the court cannot find that UNUM acted  
10 unreasonably in issuing its initial denial of plaintiff's  
11 benefits claim in August 2003. Horan, 947 F.2d at 1417. UNUM's  
12 decision that plaintiff's medical records did not demonstrate  
13 that her MS precluded her from performing her job duties for CAL  
14 ISO was a rational conclusion based on the evidence before it.  
15 Moreover, the reasonableness of UNUM's decision is further  
16 bolstered by its review of plaintiff's claim as part of its  
17 reassessment process generated by the settlement agreements with  
18 the United States Department of Labor and state regulators.  
19 During that reassessment process, UNUM specifically considered  
20 the SSA's award of benefits to plaintiff dating back to November  
21 16, 2001. Montour, 2009 WL 2914516 at \*10 (holding that while  
22 ERISA plan administrators are not bound by the SSA's  
23 determination, complete disregard for a contrary conclusion  
24 without an explanation raises questions about whether an adverse  
25 benefits determination was the product of a principled and  
26 deliberative reasoning process). Here, UNUM reasonably  
27 determined that the SSA's award of benefits did not dictate a  
28 finding that plaintiff was disabled from working at CAL ISO on

1 November 16, 2001. The SSA based its award primarily on anxiety  
2 related disorders--disorders which plaintiff did not complain  
3 about until *after* her July 2002 accident. Additionally, as to  
4 plaintiff's physical capabilities, the SSA found that plaintiff  
5 could stand, walk or sit about six hours in an eight hour day.  
6 Thus, the SSA's findings do not support the conclusion that  
7 plaintiff had physical ailments that precluded her from working  
8 in November 2001.<sup>6</sup>

9 Significantly, UNUM did not reject the SSA's findings based  
10 solely on its administrator's opinions. Instead, it requested a  
11 file review by a neurologist and a psychiatrist. Dr. Hammond  
12 found that plaintiff's medical records did not support any  
13 impairment from the diagnosis of MS, and there were no supported  
14 restrictions and limitations for this diagnosis. He concluded  
15 that plaintiff's medical records did not provide evidence that  
16 plaintiff was physically unable to perform the requirements of  
17 her job for CAL ISO. As to plaintiff's alleged psychiatric  
18 condition, Dr. Spica concluded that plaintiff's later diagnosis  
19 in February 2003 of psychiatric problems was irrelevant to her  
20 condition in November 2001, considering the significant lapse in  
21 time and multiple intervening events, including the introduction  
22 of medications, unemployment and a motor vehicle accident. Based  
23 on Drs. Hammond's and Spica's opinions, and considering the  
24 entirety of the record evidence it had before it, including  
25

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26 <sup>6</sup> It is also noteworthy that the SSA did not review  
27 plaintiff's personnel file or obtain records from plaintiff's  
28 personal injury action. Said documents amply support critical  
findings by UNUM in denying plaintiff's claim.

1 plaintiff's personnel file and deposition testimony, UNUM  
2 reasonably reached a contrary conclusion to the SSA.

3 Finally, in reviewing UNUM's decision, the court has  
4 considered its structural conflict of interest. However, under  
5 the facts of this case, that conflict does not weigh heavily.  
6 "The level of skepticism with which a court views a conflicted  
7 administrator's decision may be low if a structural conflict of  
8 interest is unaccompanied, for example, by any evidence of  
9 malice, of self-dealing, or of parsimonious claims-granting  
10 history." Abatie, 458 F.3d at 968. Here, plaintiff argues that  
11 UNUM has a history of biased claims administration, but she  
12 submits no admissible evidence on this issue. Her reliance on a  
13 Second Circuit case finding evidence of such biased  
14 administration by UNUM and a law review article in accord is not  
15 evidence of biased handling relating to *plaintiff's* claim. To  
16 the contrary, the evidence in this record suggests precisely the  
17 opposite as UNUM offered to reassess plaintiff's claim and in  
18 doing so, it specifically considered the SSA's award of benefits  
19 and it conducted a further review of plaintiff's medical records  
20 by hiring independent experts to conduct a file review. Because  
21 there is no evidence of malice or self-dealing in UNUM's denial  
22 of plaintiff's claim here, the court's skepticism of UNUM is de  
23 minimus. Thus, while the court considers the inherent conflict  
24 of interest found in UNUM because it both administrates and funds  
25 the Plan, that conflict, coupled with no other significant  
26 factor, does not provide the court grounds to find an abuse of  
27 discretion.

**CONCLUSION**

For the foregoing reasons, the court DENIES plaintiff's motion for judgment in her favor and HEREBY GRANTS judgment in favor of UNUM. The Clerk of the Court is directed to close this file.

IT IS SO ORDERED.

DATED: September 29, 2009

A handwritten signature in black ink, appearing to read "Frank C. Damrell, Jr.", written in a cursive style.

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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE